

Black Sash Submission
to the Department of Social Development
on the Draft Amendments to the Social Security Act (SAA) Regulation 26A, 2016

15 March 2016

The following is a Submission that has to date the endorsements of 59 organisations (to date) from across South Africa, with several National Organisations having their endorsements pending. The attached documentation is proof of their engagements with us from several regions.

1. Background

- 1.1 On 15 February 2016, the Department of Social Development (DSD) issued a notice in the Government Gazette No. 10564 to call for comments on Amendments to the Regulations of the Social Assistance Act (No. 13 of 2004) - see attached **pdf file** Annexure 1. The Amendments are focussed on Section 26A which covers the legal deduction in respect of funeral cover or funeral insurance.
- 1.2 Changes to Section 26A are particularly important as it can result in stopping unauthorised, unlawful and illegal deductions from the SASSA beneficiary bank accounts.
- 1.3 Below are detailed the Black Sash's draft responses and recommendations.

Note: **Bold** underlined letter/s indicate an insertion, whilst bold **[brackets]** indicate deletion/s to the current amendments.

2. Proposed recommendations from the Black Sash¹

- 2.1 “**26A.** Circumstances under which **a** deduction**[s]** may be made directly from **a** social **[assistance]** grant**[s]**”

Black Sash recommendations:

Overall, the Black Sash concurs with the changes as it provides clarity to indicate **a single** deduction from **a** social grant.

¹ Note (again): Where draft regulations show **underlined text** – it is a proposed insertion. Where there is a **[bracket]** – it is a proposed deletion.

- 2.2 “(1) The Agency may allow **one** deduction[s] for funeral insurance or scheme to be made directly from a social grant where the beneficiary of the social grant **[requests] or his or her representative consents to** such deduction in writing **and by personally submitting such request to [from]** the Agency, **provided that such representative shall not be a service provider concerned.**”

Black Sash recommendations (on 26A (1) amendments):

2.2.1 Remove this Section (1) completely. As far as possible prevent third parties acting on behalf of grant beneficiaries without a proper legal mandate or power of attorney.

OR

2.2.2 Note that the term funeral insurance and scheme has not been defined in the Act or in Regulations. Our legislative scan reveals that the phrase only appears in the Regulations.

2.2.3 Section 75 (b) of the Long Term Insurance Act ('Insurance Act') provides assistance in this regard.² While it does not define funeral scheme, it does provide that a "funeral policy" should be interpreted as an assistance policy in terms of the Insurance Act. An assistance policy has been defined in the Insurance Act as a "life policy".

2.2.4 We recommend that the term "funeral insurance or scheme" be defined or be replaced with the term that appears in the Insurance Act as the piece of legislation that governs long term insurance i.e. be replaced with the word "funeral policy";

2.2.5 Our first concern is that the word Representative (third line) is not defined in the Draft Amendments (and refers to something different or in the latest version of the SAA)³. Secondly, the Draft Amendments do not set out how representatives are appointed. Section 1 (definitions) of the SAA includes a definition for the word procurator and reads "a person appointed by a beneficiary of [SASSA] to receive social assistance of the beneficiary's behalf. The SAA also sets out the procedure to be followed for the appointment of a procurator, while the Draft Amendments do not define the procedure for the appointment of a representative. We recommend that the word representative be replaced with procurator.⁴

2.2.6 The Draft Amendments clearly states that the request for a deduction must be in writing. We recommend that this be on a special prescribed form completed, signed, witness and commissioned by the procurator in the presence of an SASSA official.

² Act 52 of 1998 (hereinafter the 'Insurance Act')

³ www.saflii.org/za/legis/consol_reg/saa13o2004rangnr898617/

⁴ defined as in an earlier version of the SAA as ““procurator” means a person appointed by a beneficiary or the Agency to receive social assistance on the beneficiary’s behalf

2.2.7 Replace the term Service provider with long term insurer, which has been define as including underwriters and brokers in the Long-Term Insurance Act (No.52 of 1998). Furthermore, in order to prevent inconsistency with regulation 26A(2) which speaks about financial service provider, we recommend that both phrases (i.e. financial service provider and long term insurer) be used in both sections or that financial service provider be used consistently and exclusively.

2.2.8 The word concerned is vague. We recommend that it be replaced with who stand to gain financially.

2.2.9 Remove this clause completely or Alternative formulation of 26A (1) below:-

"The Agency may allow one deduction for a funeral policy to be made directly from a social grant where the beneficiary or his or her procurator consents to such deduction in writing on a prescribed form in the presence of the SASSA personnel , provided that such procurator is not an official and or broker of a long term insurer as defined in section 1 of the Long Term Insurance Act (No 53 of 1998) or an official of a financial service provider as defined in section 1 of the Financial Advisory and Intermediary Services Act (No 37 of 2002)

2.3 **"(4) Notwithstanding the provisions of sub-regulations (1), (2) and (3) of this regulation, a deduction may not be permissible in respect of a foster child grant, care dependency grant, child support grant or social grant which is temporary in nature."**

Black Sash recommendations:

2.3.1 Deductions for funeral insurance or scheme should not be made from the Child Support, Foster Care, Care Dependency or any temporary social grants. The language in the Draft Amendments should not sound permissive. We therefore recommend that the word may not be replaced with is not to the following effect:

" Notwithstanding the provisions of sub-regulations (1), (2) and (3) of this regulation, a deduction ~~may~~ is not be permissible in respect of a foster child grant, care dependency grant, child support grant or social grant which is temporary in nature."

2.3.2 BS fully supports the inclusion of this clause. The option of a funeral insurance or scheme is only open to beneficiaries on state old age pension and permanent disability beneficiaries (assuming that one deduction will be possible).

2.4 **"(5) Active deductions for funeral insurance or scheme from social grants excluded in terms of sub-regulation (4), may continue to be deducted from**

a social grant for a period not exceeding three (3) months following publication of these amendments to allow the beneficiaries and financial service providers to make alternative payment arrangements outside the Agency's machinery and systems.

Black Sash recommendations:

2.4.1 For clarity and emphasis, "active funeral insurance or scheme deductions from social grants **other than from those of old age pension and permanent disability**".

2.5 **"(6) In addition to the ten percent limit referred to in sub-regulation 3 of this regulation, an affordability assessment must still be conducted prior to any funeral insurance or scheme being taken in compliance with the National Credit Act."**

Black Sash recommendations:

2.5.1 While we are of the view that affordability assessments should be performed before a long term insurer or financial service provider contract with a beneficiary to provide funeral insurance, the performance thereof in terms of the National Credit Act⁵ is limited to circumstances related to credit agreements.⁶ Given that funeral insurance providers must be registered in terms of the Insurance Act or the Financial Advisory and Intermediary Services Act⁷ ('FAIS Act'), affordability assessment should be performed under them. However, on our reading, neither the Insurance Act nor the FAIS Act prescribe affordability assessment.

2.4.2 We, therefore, suggest that the wording "in compliance with the National Credit Act" be removed. However, the method adopted in performing an affordability assessment as set out in regulation 23A of the National Credit Regulations may be incorporated into the Draft Amendment.⁸ Enforcing the affordability will have to be thought through carefully.

2.6 **"(7). Except for a deduction for funeral insurance or scheme, no deduction shall be permissible from the bank account opened for a social grant beneficiary to facilitate the payment of a social grant."**

Black Sash recommendations:

2.6.1 BS recommends that funeral insurance and scheme deductions are made prior to the transfer of social grants into the ring-fenced beneficiary bank account. No deductions whether via EFT, debit, stop orders or otherwise, will be allowed from these accounts as per the SASSA Request for

⁵ Act 34 of 2005 (hereinafter 'NCA').

⁶Section 4 of NCA.

⁷Act 37 of 2002.

⁸GN R489 in *Government Gazette* 28864 of 31 May 2006.

Proposals (RFP)/Retender submitted to the Constitutional Court in April 2015. Note that the ring-fenced beneficiary bank account must protect the confidential data of the grant beneficiaries and allow for not marketing of products/ services from particularly the credit and financial services sectors. See the alternative medium term proposal as in 2.6.3. below – viz. that NO deductions are permissible at all and for the eventual scrapping of 26A from regulations.

- 2.6.2 BS does not see the need for a grace period as we deem any deductions not related to funeral insurance or scheme as unlawful. However in the interest of administrative justice, a three month period, similarly to that including in section (5) above, should be allowed for beneficiaries to make alternative arrangements.
- 2.6.3 BS recommends that in the medium term Section 26A be removed from the SAA Regulations. This is on condition that government provides a free standardised funeral benefit and secure the necessary funding from national Treasury.

For more information please contact:

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3. Organisational and other endorsements:

We the organisations listed below, support the Black Sash Submission

Organisation	Name	Position	Email	Telephone contact/ Fax
National				
COSATU	Bheki Ntshalintshali/ Matthew Parks	General Secretary Parliamentary Office Head	Sizwe@cosatu.org.za matthew@cosatu.org.za	011 339-4911 021 465 3835
Association of Community Advice Offices in South Africa (ACAOSA)	Albert Makwela	President	albertmakwela@yahoo.com	071 802 0788 083. 728 4170
Probono.Org	Erica Emdon	National Director	erica@probono.org.za	011 339 6080
Dullah Omar Institute	Samantha Waterhouse	Director: Women and Democracy Initiative	swaterhouse@uwc.ac.za	021 959 2950
Equal Education	Leanne Jansen-Thomas	Head: Policy and Training	leanne@equaleducation.org.za	021 387 0036
Rural Health Advocacy Project (RHAP)	Marije Versteeg-Mojanaga	Director	Marije@rhap.org.za	0118800995
Ndifuna Ukwazi	Jared Rossouw	Deputy Director	jared@nu.org.za	0214233089
Council for the Advancement of the South African Constitution (CASAC)	Lawson Naidoo	Executive Secretary	madeniyah@casac.org.za lawson@casac.org.za	021 685 8809

Organisation	Name	Position	Email	Telephone contact/ Fax
Eastern Cape and Free State				
Thlolong Legal Advice Centre	Enock Tapudzi	Coordinator	enotaps@gmail.com	0730800663
NAPWA NMM Branch	Mr. M. Ramolahlei	District Coordinator	Masumparamo.mr@gmail.com	074 243 2003
Mt Fletcher Advice Office	Mr ET Hlati	Manager	0609584647@vodamail.co.za	039 257 0009
Jersey Farm Advice & Information Centre	Ms Cynthia Bewana	Coordinator	jerseyfarmadvicecentre@gmail.com	0475322868 0731177285
Zwide Community Active Trust	Vusumzi H. Mini	Trust Secretary	ortambo@tiscali.co.za	071 816 3789 083 457 6266 086 584 2937 (f)
Ficksburg Community Advice Office	Nomaswazi Tshabalala	Coordinator	-	073 999 2066 079 933 3203
Interchurch Local Development Age	Nobuzwe Mofokeng	Manager	nmofokeng@hotmail.com	079 852 1415
Qunu Community Advice Office	Philiswa Gwaleza	Coordinator	-	078 211 3171 086 232 9405
Adelaide Advice Office	Patricia De Lange	Administrator	-	076 548 7982 078 975 5942
Flagstaff Advice Office	Bomkazi Mhlongo	Coordinator	bomikazi.mhlongo@outlook.com vusisizwe.aidstraining@gmail.com	0732805599 039 252 0435 039 252 0436 073 280 5599
Marselle Advice Office	Bukelwa Ngqina	Coordinator	sinxokwanele@gmail.com	073 774 8700
Bomvana Community Advice Centre				
Indwe legal Advice Office & Development Institution	Sidney Stina	Coordinator	-	045 952 1556 045 952 1172 (f)
SANGOCO Eastern Cape	Mongameli Peter	Secretary	mongameli.peter@gmail.com	041 464 1071 0763195115

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Engcobo Community Legal Advice Office	Mabel Taleni	Coordinator	mabeltalen@gmail.com	073 002 7124
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Matatiele Advice Office	Allen Nkomo	Coordinator	allennkomo@gmail.com	039 737 4131
Nonesi Community Advice Office	Gcotyelwa Xaba		nonessilda@adviceoffice.org.za	083 979 2016 047 873 2277 047 873 2277
Hofmeyer Advice Office	Mhakazi Sintu	Coordinator	makazisintu@gmail.com hofmeyer@thusano.org	072 651 8415
Qholaqhwe Advice Office	Sam Mosikili	Coordinator	online180262@telkomsa.net	058 713 4880 0866999826 (f)
Age In Action	Ms Bernice Laiwing/ Brenda Simon	Director	brenda@age-in-action.co.za	041 4571466
Sasolburg Advice Centre	Mosela Radebe	Chairperson	. Mosela.radebe74@gmail.com	072 203 9879
Sophakama	Brenda Lalela	Administrator	brendal@sophakama.org.za	041 466 3181(t) 086 689 5375 (f) 083 241 7627 (c)
Mqanduli Community Advice Centre	Clarence Mxiniwe	-	mnganduli@adviceoffice.org.za	047 573 1041 082 340 4944
Masiphakameni Local Development Agency - Humansdorp	Mzwabantu Bailey	-	masiphakameni@webmail.co.za	073 079 2325
Justice and Peace, Kroonstad Diocese	Father Patrick	Priest	chidoroa@yahoo.com	082 533 3633
Association for People with Disabilities	Ms Francine Mwepu	Coordinator	-	046 622 5359

Organisation	Name	Position	Email	Telephone contact/ Fax
McKaiser Old Age Home	Jonathan Walton	Chairperson	jon@blacksash.org.za	046 622 7537
Alicedale Service Centre	Mr. Steve Skade	Committee Member	-	063 598 6573
Ward 4 Committee, Makana Municipality	Mr. John Sphere	Committee Member	-	060 485 2233
Grahamstown Ministers' Fraternal	Rev Dumile Monakali	Secretary	-	082 262 3237
Vevidanga Senior Service Centre	Ms Grace Ngcete	Coordinator	-	072 040 5854
Antic Service Centre	Ms Agerah Hospshire	Coordinator	-	046 636 1858
Raglan Road Service Centre for Older Persons	Ms N Pono	Committee Member	-	060 341 4105
Raphael Centre	Mary Humphreys	Director	mary@raphaelcentre.co.za	046 622 8831/ 072 762 7389
Eastern Cape NGO Coalition (ECNGOC)	Rooks Moodley	Director	rooksmoodley@ecngoc.co.za	0873731080 0866224780 (f)
Jamestown Legal Advice Centre	Eric Shinya	Coordinator	-	073 218 0945 073 797 1486
Port St John's Legal Advice Centre	Nomboniso Gaya	Coordinator	ebonygaya@gmail.com	082 507 2283 071 014 0754
KwaZulu Natal and Mpumalanga				
Democracy Development Programme (DDP)	Dr. Rama Naidu	Exec Director	raman@ddp.org.za	031 304 9305
Diakonia Council of Churches	Ms Nomabelu Mvambo-Dandala	Director	Sabelo.mthembu@diakonia.org.za	031 310 3513
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Organisation	Name	Position	Email	Telephone contact/ Fax
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Gauteng and NorthWest				
Alexandra Development Centre	Lefa Molefe	ADC Manager	info@alexdc.org.za	011 057 6526
Refentse Health Care Giving Programme (REHECAPRO)	Philip Mailwane	Director	rehecapro@gmail.com	071 657 2071 086 624 4328 (f)
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Tshedza Development	Jacob Khangela	Project Manager	tshedzadevelopmentprojects@gmail.com	083 587 5731 072 442 3311
Dirang ka Kagiso	Moeketsi Hlumbane	Project Manager	dirangkakaqiso@gmail.com	016 986 2581 084 082 2029
Tshwane North Outreach	Mishack Mahlangu	Centre Manager	mahlangu.mishack@gmail.com	083 305 2667
Justice and Peace Ministry, Catholic Archdiocese of Pretoria	Michael Tloubatla	Chairperson Pta Archdiocese J&P Commission	kselema@sacbc.org.za	078 332 0366
Justice and Peace Ministry,	Brian Mooi	J&P Fieldworker	Brianmooi.jnp@gmail.com	011 402 6400

Organisation	Name	Position	Email	Telephone contact/ Fax
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Khutsong Youth Friendly Service (K.Y.F.S)	Paseka Mthini	Project Manager	pasekamthini@gmail.com	018 783 0634 (tel/fax) 076 070 5497 076 344 6711
Bojanala Legal Advice Centre, Phatsima, North West Province	Daniel Dibe	Project Founder	bojanalalegalteam@webmail.co.za dibedaniel82@gmail.com	083 490 2149
Western Cape Metro				
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Mosselbay Ngo Forum	Jerome Meyer	Chairperson	mbayempowerment@gmail.com	0790487950
Genesis Community Projects	Benjamin	Chairperson	genesiscommunityprojects@gmail.com	0743856502
Siviwe Youth Development	Isaac Lewack	Chairperson	ijlawack@hotmail.com	0723320840
Mosselbay Child Welfare	M Carelse	Vice-Chairperson	mbaywelfare@telkomsa.net	0796973272
Mosselbay Poverty Alleviation	Eunice Damons	Chairperson	Povertymos@gmail.com	082 685 6475
Hope4Destiny (Eindhoven, Western Cape)	Janap Odendaal	Coordinator		078 416 4029
Lighthouse Frail Care Aids Unit	Vicki-Lee Gelderbloem	Administrator	lighthousegrouping@gmail.com	021 704-6060
20 Signatories from concerned Lighthouse Frail Care Aids Unit	See attached pdf file			
Great Brak Multipurpose Committee	Pastor Leon Prinsloo	Chairperson	afmgreenhaven@hotmail.com	082 458 543?
70 Signatories from concerned residents in Kayamandi,	See attached pdf file			

Organisation	Name	Position	Email	Telephone contact/ Fax
Stellenbosch				
18 signatories from Hope4Destiny and 2 concerned residents			See attached file	